Perhaps the most unusual part of the main opinion is its quotation of a provision of the deed given to the bank by Hickey in 1965, wherein the conveyance was made subject to any easements or rights of way for roads, ditches, canals, pole lines, transmission lines or like facilities granted by Hickey's buyer or by Hickey's grantee since May 26, 1961, as justification for the main opinion's conclusion that Hickey was a party to the grant of an easement of any kind. A careful reading of that provision seems clearly to indicate that Hickey personally did not consent to any easement or the easement contended for in the opinion. It says just the opposite and eliminates any other interpretation of his actions by carefully saying the conveyance was subject, - not to any encumbrances resulting from any action of his, - but only "as a result of the actions of Grantee [the Bank] or of the Buyers [Larsens] under that certain Sales Agreement dated May 26, 1961," - the date Hickey conditionally sold to Larsen. This is not hearsay. This is a writing, and seems to deny expressly and specifically any grant of an easement as a result of anything done or said by Hickey.

The trial court made a rather novel finding. It said "Because of the excessive water . . . Larsens and Smiths decided it would be to the best interests of both that the ditch be relocated." This, of course, has nothing to do with Hickey or this case. As a matter of fact, not only was there no admissible evidence that Hickey was any party to a conveyance, oral or written, but Hickey by the provision he inserted in his deed to the bank, actually disclaimed any such intention, as pointed out supra.

One wonders what this court's position would be if, under identical circumstances, this case was concerned, not with the creation or grant of an easement for transportation of water, Larsen orally had agreed or attempted to convey half of Hickey's land to Smith for half of Smith's adjoining tract.

A case that quite appropriately reflects the observations of this dissent, and which states reasons that should be controlling in the instant case, is that of Cook v. Rigney, 113 Mont. 198, 126 P. 2d 325 (1942), which see.
